IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8348 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAJUBHAI KANAIYALAL YADAV

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 8348 of 2004

MR HR PRAJAPATI for Petitioner No. 1

MR MR PRAJAPATI for Petitioner No. 1

MS HB PUNANI AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE C.K.BUCH

Date of decision: 14/12/2004

ORAL JUDGEMENT

#. Heard Mr.M.R.Prajapati, learned counsel appearing for the petitioner and Ms.H.B.Punani, learned AGP for the

other side.

#. The present petition is filed under Article 226 read with Articles 21 and 22(5) of the Constitution of India challenging the legality and validity of the order of detention dated 8.6.2004 passed by the Police Commissioner, Ahmedabad City, under purported exercise of powers vested with the detaining authority under Section 3(1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 (for short "the Act").

#. The petitioner is branded as "a bootlegger" within the meaning of Section 2(b) of the Act, as he was found involved in offences registered under the Bombay Prohibition Act. For recording subjective satisfaction, the detaining authority has considered the fact of registration of two criminal offences punishable under Bombay Prohibition Act by two different police stations. The co-detenu of the present petitioner was found involved in three different offences, has been set at liberty by this Court while allowing Special Civil Application No.11444 of 2004 in respect of detenu -Salimbhai Abdulbhai Shaikh. Being co-accused of the second offence mentioned in the grounds for detention conveyed to the present petitioner, becomes relevant. It is true that the co-accused of the second crime was found involved in two other offences committed in the year 2003 and on the other hand, the present petitioner was found involved in one offence registered in the month of February, 2004. So, the fact of case against the present petitioner can be said to be slightly different than the case of Salimbhai Abdulbhai Shaikh. But when it appears from the record and the grounds of detention conveyed to the present petitioner, the detaining authority has mainly placed reliance for recording subjective satisfaction to the effect that the activity of the petitioner is detrimental to maintenance of public order and public health on account of registration of offences by Meghaninagar Police Station on 6th June, 2004. So the present petitioner can get advantage of the order passed by this Court in above said Special Civil Application.

#. One of the arguments of Mr.Prajapati is that registration of two different offences at the interval of four months could not have been said to be an activity prejudicial to maintenance of public order. For the sake of arguments, it is accepted that the petitioner is genuinely involved in both these offences, even then, it can be said to be a wrong against maintenance of law and order.

#. The petitioner undisputedly was in judicial custody in the offence registered on 6th June, 2004. Just as the petitioner of above mentioned Special Civil Application, there is some force in arguments of Mr.Prajapati that the order has been passed without application of mind and contention of the sponsoring authority ought not to have been negatived on saying that it is not necessary to pass preventive detention order when it emerges from the grounds of detention conveyed to the petitioner that the petitioner was in judicial custody, this Court should turn down the order on this ground also.

#. It would be beneficial to refer the decision of the Apex Court in case of ANRUTKAK AND OTHER V. UNION GOVERNMENT, AIR 2000 SC 3675 made in para-6, 7 & 8 and since the same is relevant, the same is reproduced as under :

"6. The requirement as noticed above in Binod Singh's case (AIR 1986 SC 2090 : 1986 Cri LJ 1959) (supra) that there is likelihood of the petitioners being released on bail that however is not available in the reasonings as provided by the concerned officer. The reasoning available is the "likelihood of his moving an application for bail" which is different from "likelihood to be released on bail". This reasoning, in our view, is not sufficient compliance with the requirements as laid down.

7. The emphasis however, in Binod Singh's case (supra) that before passing the detention order the concerned authority must satisfy himself of the likelihood of the petitioner being released on bail and that satisfaction ought to be reached on cogent material. Available cogent material is the likelihood of having a ail application moved in the matter but not obtaining a bail order.

8. On the wake of the aforesaid, we do not feel inclined to record our concurrence with the order of detention passed in the matter. As such the same is quashed. The appeals are disposed of accordingly."

#. The petition succeeds and the same is allowed. The order of detention dated 8.6.2004 is vitiated and the same is hereby quashed and set aside. The detenu - Rajubhai Kanaiyalal Yadav who has been detained at Rajkot Jail be set at liberty forthwith if not required in any

other case. Rule is made absolute accordingly. No order as to costs. Direct Service is permitted.

Date :14/12/2004 [C.K.Buch, J.]

#kailash#